IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

WP(C).No. 8390 of 2007(W)

AGAINST THE ORDER DATED 23/02/2007 IN IA.500/07 IN OS.34/1998 of MUNSIFF COURT, ALUVA

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PETITIONER:

NABEEZA, W/O.MUHAMMED KHAN, AGED 65 YEARS, KOTTAKKAKATH HOUSE, THAYIKKATTU KARA, ALUVA VILLAGE.

BY ADV. SRI.SHAJI P.CHALY

RESPONDENTS:

SABU KHAN, S/O.MUHAMMED KHAN, AGED 42 YEARS, RESIDING AT AISWARYA NAGAR, HOUSING COLONY, THAYIKKATTU KARA, ALUVA VILLAGE.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P.BALACHANDRAN, J.

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W.P.(C)NO.8390 OF 2007

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Dated this the 13th day of March 2007

JUDGMENT

The petitioner is the first defendant in O.S.34/98 on the file of the Munsiff's Court, Aluva. She is the mother of plaintiff as also the other defendants. The suit is one for partition. Preliminary decree had already been passed. In the final decree proceedings the Commissioner filed a report effecting partition of the property but along with the report a suggestion is made stating that if the parties are not agreeable to partition the property in accordance with the report, the property can be put to auction among sharers. Obviously, the division effected by the Commissioner was not acceptable to any of the parties. Consequently, the learned Munsiff allowed the property being put to auction among the sharers. The Commissioner has valued the property at Rs.3½ lakhs. The property is 9½ cents not abutting any high way or any public road. In the auction, the respondent, who is the second defendant in the suit bid the property for the highest offer of Rs.3,55,000/-.

2. Now the petitioner, who is the mother of the parties, filed Ext.P1 petition before the court below contending that the property is actually worth much more and the sale has to be set aside. According to her, being ill she could not appear before the court on the day on which the auction was conducted. It is worthy to note that Ext.P5 shows that the petitioner and her two children were being represented by the same counsel Sri.R.Rajasekharan Nair. Obviously, it was in his presence that the auction was conducted. It is also worthy to note that none of the other children of the petitioner who were all respondents along with the petitioner in I.A.1146/07 has any objection to the auction sale that has been knocked down in favour of the respondent/2nd defendant. Strangely enough they are not impleaded in this writ petition and the respondent/2nd defendant alone was made a party in I.A.500/07 as well filed by the petitioner to set aside the auction sale. The auction was conducted at 2.30 p.m. on 30.1.2007 as per Ext.P4 order dated 4.1.2007. The petitioner has no case that she was not informed of the date of auction. Still she did not move for adjournment of the date of auction and after the sale has been knocked down in

favour of one of her sons without objection of her other sons and daughters she has filed I.A.500/07 aforesaid to set aside the auction sale. The intention of the petitioner/mother is not clear as to how and why she has moved petition for setting aside the sale. In the circumstances discussed above, Ext.P1 petition seeking for setting aside the sale was rightly being dismissed by the court below vide Ext.P3 order.

This writ petition in the circumstances is devoid of merit and is dismissed.

K.P.BALACHANDRAN, JUDGE

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